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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
FRANK PERRONE dba MARGOLA APTS.,  
c/o VINCENT D. MILLER, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION CONTROL  
AGENCY,

Respondent.

PCHB No. 77-48

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

A formal hearing on the appeal of Frank Perrone of a \$50.00 civil penalty for an alleged smoke emission violation of Respondent's regulations came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Dave Mooney) in Seattle, Washington on July 11, 1977.

Appellant Perrone was represented by Brian Bate of Vincent D. Miller, Inc., property manager for Appellant's Margola Apartments. Respondent appeared through its attorney, Keith D. McGoffin.

Having heard the testimony and being fully advised, the Board makes and enters the following

FINDINGS OF FACT

I

Respondent, pursuant to RCW 43.21B.260, has filed with this Board a certified copy of its Regulation I containing Respondent's regulations and amendments thereto.

II

Appellant Frank Perrone is the owner of the Margola Apartments in Seattle, Washington. Vincent D Miller, Inc was the property manager of the building during all times relevant to this appeal. On March 24, 1977, black smoke was emitted from a boiler stack on his apartment building for an observed time of six consecutive minutes of an opacity equal to that of Number 5 on the Ringelmann Chart. In connection therewith, Responder issued to Appellant, Notice of Violation No. 14199, and Notice of Civil Penalty No. 3258, in the amount of \$50.00, which is the subject of this appeal.

III

Section 9.03(b)(1) of Respondent's Regulation I makes it unlawful to cause or allow for more than three minutes in any one hour an emission of an opacity darker in shade than No. 1 on the Ringelmann Chart. Section 3.29 authorizes Respondent to levy a civil penalty of not more than \$250.00 per day for each violation of Regulation I.

IV

A new resident manager for the apartments had been hired and was moving in to the building on the day in question. He had not yet been instructed in the operation of the boiler, which was the source of the emissions. When the property manager was notified by a tenant of the emissions, he caused the boiler to be shut off, and had the unit serviced.

1 that evening by a furnace repair man, who attributed the emission to  
2 a part which had stopped functioning, and which he characterized as an  
3 unpredictable breakdown. The unit had also been serviced two days before  
4 this incident.

5 V

6 On April 3, 1977, Appellant ordered the replacement of the boiler  
7 burner, which burned black oil, with a unit burning diesel oil. This  
8 change was accomplished, at a cost of \$770.00.

9 VI

10 Appellant has not previously received a Notice of Violation or  
11 Civil Penalty from Puget Sound Air Pollution Control Agency.

12 VII

13 Any Conclusion of Law hereinafter stated which should be deemed a  
14 Finding of Fact is hereby adopted as such.

15 From these Findings the Pollution Control Hearings Board comes to  
16 these

17 CONCLUSIONS OF LAW

18 I

19 Appellant violated Section 9.03(b)(1) of Respondent's Regulation I.

20 II

21 Appellant believes that the Agency's action in issuing a \$50.00 fine  
22 implies negligence on his part. Because all reasonable steps were taken  
23 to avoid the violation, and costly mitigative remedies were achieved  
24 promptly after the violation, Appellant feels the fine is not fair.

25 Respondent's Section 3.29 (Civil Penalty) states: ". . . any person  
26 who violates any of the provisions of this regulation shall incur a penalty  
27 in the form of a fine in an amount not to exceed two hundred fifty dollars

1 per day . . . "

2 No intent or negligence need be shown to support a penalty for  
3 violation of the regulation.

4 However, in considering the reasonableness of the amount of the  
5 penalty, the Board notes that this is Appellant's first violation, and  
6 that he has endeavored to comply with Respondent's regulation by  
7 converting to heating equipment which should avoid future violations  
8 of this nature While Notice of Civil Penalty No. 3258 is only one-fifth  
9 of the maximum allowable amount, further mitigation would be reasonable.

10 III

11 Any Finding of Fact which should be deemed a Conclusion of Law is  
12 hereby adopted as such

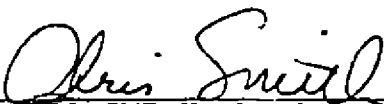
13 Therefore, the Pollution Control Hearings Board issues this


14 ORDER

15 The \$50 00 civil penalty is affirmed, provided however, that \$25.00  
16 of the civil penalty is suspended on condition that Appellant not violate  
17 Respondent's regulation for a period of six months from the date of this  
18 Order.

19 DATED this 29<sup>th</sup> day of July, 1977.

20 POLLUTION CONTROL HEARINGS BOARD

21   
22 CHRIS SMITH, Member

23   
24 DAVE J. MOONEY, Member  
25  
26

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER